INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statement	3
Argument	6
Conclusion	13

CITATIONS

Cases:

American President Lines v. *United States*, 75 F. Supp. 110	8
Canadian Aviator v. *United States*, 324 U. S. 215	7
Drummond v. *United States*, 78 F. Supp. 730	12
Matson Navigation Co. v. *United States*, 284 U. S. 352	9
Oahu Ry. & Land Co. v. *United States*, 73 F. Supp. 707	12
Silva v. *Bankers Commercial Corp.*, 163 F. 2d 602	9
United States Fleet Corp. v. *Rosenberg Bros.*, 276 U. S. 202	9

Statutes:

Act of April 25, 1949, c. 92, P. L. 55, 81st Cong., amending 28 U.S.C. 2401(b)	12
Suits in Admiralty Act (41 Stat. 525, as amended, 46 U.S.C. 741 *et seq.*)	3
Sec. 1 (46 U.S.C. 741)	7
Sec. 2 (46 U.S.C. 742)	2, 7, 8
Sec. 3 (46 U.S.C. 743)	8
Sec. 5 (46 U.S.C. 745)	2, 6, 10
Sec. 13	9
Tort Claims Act (60 Stat. 842; now 28 U.S.C. 1346(b), 2401(b), 2680 (d))	3
Sec. 410(a)	11
Sec. 411	11
Sec. 421(d)	9

Miscellaneous:

H. Rep. No. 2245, 77th Cong., 2d sess., p. 9	12
H. Rep. No. 1287, 79th Cong., 1st sess.	12

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 410

RYAN STEVEDORING COMPANY, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 19-20) is reported at 1949 A. M. C. 753. The opinion of the United States Court of Appeals for the Second Circuit (R. 27-36) is reported at 175 F. 2d 490.

JURISDICTION

The judgment of the Court of Appeals was entered June 6, 1949 (R. 37). A petition for rehearing was denied July 22, 1949 (R. 41). A petition for a writ of certiorari was filed October 20, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether an impleading petition in admiralty may be brought against the United States under the Suits in Admiralty Act in respect of government-owned cargo in every case where "if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained" (46 U. S. C. 742) or whether it is also necessary that liability be "directly connected with the Government's ownership and operation of a vessel"; if so,

2. Whether, more than two years having elapsed since the occurrence of the damage out of which the cause of action arose, the filing of an impleading petition in admiralty is barred by the requirement of the Suits in Admiralty Act that suit "shall be brought within two years after the cause of action arises" (46 U. S. C. 745).

3. Whether in the special circumstances of the present case the Tort Claims Act confers jurisdiction of an impleading petition in admiralty based upon a maritime tort which occurred prior to January 1, 1945.

STATEMENT

This claim of indemnity by petitioner against the United States arises out of the explosion on the pier end at Hoboken, New Jersey, on August 11, 1944, of certain government cargo. The cargo was in the course of being first discharged onto the pier from lighters, which were bringing it from the rail terminal, and then reloaded aboard a government vessel which would carry it to Russia. Petitioner, the stevedore engaged in transferring the government cargo, seeks review of the decision of both lower courts that there is no jurisdiction under the Suits in Admiralty Act (46 U. S. C. 741 *et seq.*) of an impleading petition for damage caused by government cargo unless liability is "directly connected with the Government's ownership and operation of a vessel" (see R. 20, 32). Petitioner further urges that if there is no jurisdiction under the Suits in Admiralty Act, jurisdiction should be found under the Tort Claims Act (28 U. S. C. 1346(b)). Summarized from the pleadings, the facts, so far as pertinent, follow.

On August 9, 1947, just under three years after the damage, which occurred on August 11, 1944, Petterson Lighterage and Towing Corporation, as owner of the Derrick Lighter *Abbate,* filed a libel against petitioner and another in a cause of "loss and damage, civil and maritime" (R. 2-6). The libel charged petitioner with negligently causing a fire on the pier which spread and damaged the Derrick Lighter *Abbate,* as a result of peti-

tioner's agents and employees having "carelessly permitted and caused a chisel truck which they were operating on said pier to collide with a number of metal drums containing cargo of a highly explosive nature" (R. 3). Damages were claimed in the amount of $7,000 (R. 5).

Five months later, on January 19, 1948, or almost three and a half years after the damage, petitioner answered the libel, denying negligence and damage (R. 7-8), and filed an impleading petition against the United States and another (R. 9-16). The impleading petition invoked the jurisdiction of the district court under the Suits in Admiralty Act, the Tucker Act, and the Tort Claims Act (R. 9-10). The petition charged the United States with negligence, *inter alia,* in that the drums of cargo were not marked or labelled as required by applicable law and regulations "so as to give notice to petitioner and its employees of the explosive or inflammable nature of the contents of said drums" (R. 15). Other specifications of negligence included failure properly to care for the drums and their contents prior to their shipment as a result of which they became dangerous to handle (R. 14-15).

The United States filed exceptions to the impleading petition on the grounds, *first,* that it appeared from the face of the petition that more than two years had elapsed since the alleged cause of action arose, and *second,* that the facts alleged failed to state a cause of action under either the Suits in Admiralty, Tucker or Tort Claims Acts

(R. 17). The district court sustained the Government's exceptions and dismissed the impleading petition (R. 21).

The district court in holding that petitioner's claim was not one within the terms of the Suits in Admiralty Act stated, "we have been compelled to the conclusion as was the Court in *American President Lines* v. *United States,* 75 F. Supp. 110, that the liability arising from the Government's ownership of cargo is directly connected with the Government's ownership and operation of a vessel." Moreover, it continued, "Cargo is normally understood to be merchandise carried by a vessel and that carriage can hardly be said to begin before the loading operation starts" (R. 20). The Tort Claims and Tucker Acts, the district court held, were equally unavailing in the particular circumstances alleged in the libel (R. 19, 20).

On appeal, the court below affirmed. Like the district court, it held the Suits in Admiralty Act inapplicable. It conceded that the statutory language taken alone would "seem to assume a liability in cargo equal to, or coordinate with, that of a vessel" (R. 32). But it continued, "Nevertheless, we agree with the district judge upon the ground which he actually chooses, that the liability referred to in the statute as arising from the government's ownership of cargo must be one 'directly connected with the Government's ownership and operation of a vessel' * * * And the drums on the pier, even if about to be loaded upon

a vessel, cannot be considered cargo in any real sense having to do with navigation of government vessels" (R. 32, 34).

The court below referred to the Government's contention that, in any case, the impleading petition having been filed three and a half years after the damage occurred was not "brought within two years after the cause of action arises" as required by the Suits in Admiralty Act (46 U.S.C. 745). It agreed that "an impleading petition should be dismissed where the bar of the statute obtains" but added "This ground was not, however, relied on by the district judge and is not necessary to our present decision" (R. 35).

The court below held the Tort Claims and Tucker Acts inapplicable. Under the Tort Claims Act, the court said, "liability exists only for torts committed on or after January 1, 1945" and hence "a later accruing claim for indemnity because of an earlier tort would seem not freed from that bar" (R. 35). Any cause of action for contractual indemnity under the Tucker Act, the court found too highly speculative to afford a ground of suit at this time and added "Should liability become more imminent, impleader may then be sought" (R. 36).

ARGUMENT

We believe that the first question presented (see *supra,* p. 2) is appropriate for consideration and decision by this Court, but that the other questions

are neither ripe for determination nor properly presented in the current posture of this case.

1. Admittedly, as petitioner points out, between private parties there would be admiralty jurisdiction of the impleading petition which the lower courts dismissed. And this Court has established that the broad purpose of the Suits in Admiralty Act as supplemented and amended by the Public Vessels Act was to impose on the United States the same liability (apart from seizure or arrest under a libel *in rem*) as is imposed by the admiralty law on private parties. See *Canadian Aviator* v. *United States,* 324 U. S. 215, 228. In dismissing petitioner's impleading petition because the liability asserted is not one "directly connected with the Government's ownership and operation of a vessel", the lower courts appear to have erred in attempting to add to the statutory requirements for jurisdiction already imposed by Congress a further condition justified by neither the terms nor the policy of the Suits in Admiralty Act.

The statute commands that "no cargo owned or possessed by the United States * * * shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process" (46 U.S.C. 741). It creates a plain right of suit "In cases where * * * if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained" (46 U.S.C. 742).

It provides that suit shall be brought in the district "in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the * * * cargo charged with liability is found" (*ibid.*). It authorizes proceedings in rem "wherever it shall appear that had the * * * cargo been privately owned and possessed a libel in rem might have been maintained" (46 U.S.C. 743). Nowhere is there any requirement that liability be connected with ownership and operation of a vessel, for the statutory purpose was to deal with liability of government cargo whether transported on private or government vessels.

The question is plainly a matter of substantial public importance which should be settled by decision of this Court. Prior to the decision of *American President Lines* v. *United States*, 75 F. Supp. 110, 112 (S.D. N.Y.), relied on by both lower courts, it had been the accepted practice, in view of the literal language of the statute, that in respect of both torts and contracts, the Suits in Admiralty Act furnishes the proper remedy against the United States on all maritime causes of action arising out of the ownership and possession of cargo no less than from the possession and operation of merchant vessels.[1] It has long been

[1] In fact, the result but not the opinion of the *American President Lines* case appears to have been correct. That was an action in the nature of *indebitatus assumpsit* to recover back the amount deducted by the Comptroller General in

established by statute and decision of this Court that the remedy under the Suits in Admiralty Act, where available, is exclusive of that under either the Tucker Act or the Tort Claims Act. The Tucker Act is held to have been repealed to the extent of the admiralty remedy by section 13 of the Suits in Admiralty Act (41 Stat. 525). *United States Fleet Corp.* v. *Rosenberg Bros.*, 276 U. S. 202, 213; *Matson Navigation Co.* v. *United States*, 284 U. S. 352, 356-357. The Tort Claims Act contains an express exception of such cases (sec. 421(d), 60 Stat. 845; now 28 U.S.C. 2680(d)). It is thus imperative that the doubt created by the decision below as to the appropriate remedy in cases involving government cargo should be promptly clarified.

The availability of the Suits in Admiralty Act remedy is one constantly presented in government admiralty litigation. Suits for freight, general average and salvage of government-owned cargo and for damage done by government cargo to the vessels and cargo of others are frequent as a result of the Government's shipment of cargo on

---

making payment of the plaintiff's freight bills on account of certain cross claims by the Government against the carrier. Actually, it was not a suit for the freight money which had already been allowed by the Comptroller. Rather it was a suit to recover back the amount, which the Comptroller had withheld and deposited to the credit of the Government's cross claim, on the ground that such cross claim was invalid and the amount was therefore held by the Government to the carrier's use. Such actions are not of admiralty or maritime jurisdiction. Cf. *Silva* v. *Bankers Commercial Corp.*, 163 F. 2d 602, 604 (C. A. 2).

privately operated vessels. In time of peace, with government cargo being more and more transported by private vessels, the issue is of increasing importance. If the United States cannot be joined in libels or brought in by impleading petitions in litigation arising out of maritime causes of action but separate civil actions must be filed under the Tort Claims Act or Tucker Act, both the United States and the other parties involved will be unnecessarily subjected to inconveniences. In these circumstances we do not oppose the granting of the writ to review this question and to determine to what extent, and in what manner, the provisions of the Suits in Admiralty Act are exclusive.

2. Petitioner contends that the impleading petition is not barred by the two-year limitation provision of the Suits in Admiralty Act (46 U. S. C. 745) unless that Act requires "the application of a special and unique rule for determining the time when a maritime cause of action for indemnity or contribution arises or accrues against the United States" (Pet. 7-8). The court below referred to this contention but expressly declined to rule thereon in the absence of a decision of the point by the district court (R. 35). For the same reason it is believed this Court should not undertake to pass upon it. Although the pleadings present the bare facts of the date the damage occurred, the date petitioner was sued, and the date the impleading petition was filed, nothing indicates whether petitioner,

at the time of the fire, suffered other direct damage to which the present claim of indemnity or contribution is but incidental or when petitioner first learned of libelant's intention to hold petitioner liable for its damage. Questions of limitations are not always decidable on exceptions or motion to dismiss. It would seem preferable to have the evidence sifted, the facts initially found, and any questions of laches decided by the district court. Such issues of law as may then survive can be decided, in ordinary course, in the light of the actual circumstances.

3. Petitioner's last question, concerning the possibility of jurisdiction under the Tort Claims Act in the event jurisdiction is not conferred by the Suits in Admiralty Act, likewise appears not to merit review. We believe that both courts below correctly rejected petitioner's claim of Tort Claims Act jurisdiction. That Act grants the district courts jurisdiction only of *civil actions* against the United States on claims accruing after January 1, 1945 (sec. 410(a), 411; now 28 U. S. C. 1346(b), 2401(b)). Here the tort occurred August 11, 1944 and this is a proceeding in admiralty, not a civil action.

Nothing in the language of the Act or in its legislative history indicates that it was intended to authorize *impleading petitions in admiralty proceedings* whereby the United States became an additional respondent with petitioner in a libel brought

against it by libelant after the expiration of the two-year limitation period within which libelant itself could have sued the United States in admiralty. On the contrary, it was expressly stated by the House Judiciary Committee that it was not intended to permit the United States to be joined with any person as a defendant or lift its immunity except as specifically stated.[2]

Moreover, the Act covers only causes of action sounding in tort, and nothing indicates a Congressional intent to extend jurisdiction to quasi-contractual claims for restitution which are implied in law. *Oahu Ry. & Land Co.* v. *United States,* 73 F. Supp. 707 (D. Hawaii); *Drummond* v. *United States,* 78 F. Supp. 730, 731 (E.D. Va.). If petitioner's alleged right under the Tort Claims Act can rest on a claim to indemnity or contribution rather than on the tort, as it suggests, then it has until April 25, 1950, to maintain a separate suit thereon(Act of April 25, 1949, c. 92, P. L. 55, 81st Cong., amending 28 U. S. C. 2401(b)). If, as it

---

[2] H. Rep. No. 2245, 77th Cong., 2d Sess., p. 9: "It is intended that the district courts in exercising jurisdiction under this title shall exercise essentially the same type of jurisdiction as district courts exercise concurrently with the Court of Claims of the United States under the Tucker Act * * *. The bill therefore does not permit any person to be joined as a defendant with the United States and does not lift the immunity of the United States from tort actions except as jurisdiction is specifically conferred upon the district courts by this bill. See *United States* v. *Sherwood,* 312 U.S. 584 (1941); *Lynn* v. *United States,* 110 F. 2d 586, 588 (C.A. 5, 1940); *Waite* v. *United States,* 57 C. Cls. 546 (1922); *Jackson* v. *United States,* 27 C. Cls. 74, 84 (1891)". See also H. Rep. 1287, 79th Cong., 1st Sess.

asserts, its has no cause of action until it pays libelant or until final decree is entered against it on the libel herein, its claim obviously will not be barred by limitations even then.

CONCLUSION

For the reasons stated, the United States does not oppose the granting of the writ of certiorari. It is respectfully submitted, however, that the writ, if granted, should be limited to a review of the first question.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
PAUL A. SWEENEY,
LEAVENWORTH COLBY,
Attorneys.

NOVEMBER 1949.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 932895 303